

Exhibit 4

(Filed Under Seal)



Deposition of:
Derek Muehrcke , M.D.

January 11, 2019

In the Matter of:
**In Re: Bard IVC Filters Products
Liability**

Veritext Legal Solutions
800.808.4958 | calendar-atl@veritext.com | 770.343.9696

In Re: Bard IVC Filters Products Liability

Page 169

1 A. Other than the literature which suggests
2 that the longer a filter is in place, the more the
3 complications. And I would think that a filter which
4 has already lost five of six arms has no -- has very
5 little clot catching ability not only because of the
6 loss of the upper five arms and because of the tilt;
7 but I would think that that filter probably is not
8 very functional, and I'd be concerned about that
9 thing falling apart. Five struts have already fallen
10 apart.

11 Q. Thank you for that. My question was you
12 cannot quantify the risk that Ms. Tinlin will
13 experience any additional complications from a
14 Recovery Filter if it's left in place, can you?

15 MR. O'CONNOR: Object to the form of the
16 question.

17 THE WITNESS: The risk I think is
18 40 percent in five years in some of the literature.

19 Q. (By Ms. Helm) So my question to you is,
20 what is the percentage risk or chance that Ms. Tinlin
21 will experience any additional complications from her
22 Recovery Filter?

23 MR. O'CONNOR: Object to the form.

24 THE WITNESS: I'd say 40 percent in five
25 years, or 5.5.

In Re: Bard IVC Filters Products Liability

Page 170

1 Q. (By Ms. Helm) So she's had -- how long
2 has her filter been implanted?

3 A. It's been in for -- since 2005. So
4 eight -- ten years. Ten, eleven years.

5 Q. Okay. So are you saying that there is a
6 40 percent chance that in the next five years she
7 will have additional complications?

8 A. Based on the medical literature.

9 Q. And what literature do you base that on?

10 A. Let me see if I can find it here for you.

11 Q. And I'm specifically asking for any
12 literature that addresses additional complications at
13 15 years out.

14 A. I mean, if you pigeonhole it like that, no
15 one knows that. No studies have been done. We're
16 just following -- we're starting to learn about these
17 filters now.

18 Q. Okay. So it's fair to say that you don't
19 know what the risk is that she will experience any
20 additional complications?

21 A. The only data I have to --

22 MR. O'CONNOR: Hold on. Hold on. Because
23 he's still trying to answer two questions back, and
24 you didn't let him go through the literature.

25 MS. HELM: Well, I revised my question on

In Re: Bard IVC Filters Products Liability

Page 188

1 Q. Okay.

2 A. But I think the vast majority of cardiac
3 surgeons would probably be very uncomfortable sitting
4 on a fragment in someone's heart that's beating.

5 Q. Okay.

6 A. Hostile environment.

7 Q. But as far as data or published
8 information, the only thing you have is Trerotola,
9 correct?

10 A. Correct. I think, you know,
11 Fraser-Johnson required two surgeries on her heart.

12 Q. You mentioned earlier that as a report --
13 as a result of the incision hernia repair, Ms. Tinlin
14 has a nonfunctional area of her diaphragm [sic]. Do
15 you recall that testimony?

16 A. Yeah.

17 Q. How much of her diaphragm -- of her
18 diaphragm is nonfunctional as a result of that hernia
19 repair?

20 A. It's probably going to be about 5 or 10
21 percent.

22 Q. And in the medical literature that you --
23 I'm sorry -- the records that you reviewed through
24 December of 2015, did you see any complications or
25 symptoms that she reported as a result of that 5 to

In Re: Bard IVC Filters Products Liability

Page 189

1 10 percent nonfunctional area of her diagram [sic]?

2 A. The shortness of breath.

3 Q. That's the only thing you can attribute to
4 it?

5 A. Uh-huh.

6 Q. Is that yes?

7 A. That's yes.

8 Q. Okay. Let's talk this Appendix B to your
9 report, which is on the very last page. I want to
10 start with No. 2. And it says that an exhibit that
11 you plan to present at trial is a CT scan showing the
12 interaction of the IVC filter just after implant with
13 6 o'clock leg interacting with the superior end plate
14 of the L3 vertebra, causing immediate leg pain after
15 insertion.

16 Is that simply the CT scan from May 8,
17 2005?

18 A. Yeah.

19 Q. Okay. And then No. 6, a "CT scan
20 illustration showing the placement and current
21 position of the Bard Recovery Filter in Ms. Tinlin.
22 This will show the jury the interaction of the arms
23 and the legs of the filter with her surrounding
24 abdominal contents."

25 Did you bring that CT scan illustration

In Re: Bard IVC Filters Products Liability

Page 249

1 being intubated for three or four days, and the fact
2 that someone could be intubated very easily is very
3 consistent with tracheomalacia. It doesn't cause
4 stenosis, it causes a collapsing of the trachea. And
5 it can cause problems with extubation, but she didn't
6 have a problem with that.

7 So based on the bronchoscopy which proved
8 she had tracheomalacia, I think she has it, and to
9 say otherwise just is contrary to the facts.

10 Q. And going back to the arrhythmia, cardiac
11 failure that you -- it's your opinion that Debra
12 Tinlin is at risk from her filter. Correct?

13 A. I think she's at risk from her -- I'm
14 sorry. Can you repeat the question?

15 Q. Sure. Do you believe -- is it your
16 opinion that Debra Tinlin is at risk of complications
17 including arrhythmia and cardiac failure due to her
18 filter complications?

19 MS. HELM: Object to the form.

20 THE WITNESS: Yes, I do. I think that her
21 filter disintegrated in her body and sent three
22 fragments to her lungs and two into her heart which
23 required extensive cardiac surgery with a bypass time
24 of over four hours and nine minutes, and she's at
25 risk for future problems. This can happen again

In Re: Bard IVC Filters Products Liability

Page 250

1 because her filter is still in place, missing several
2 arms, several struts, and it is unstable.

3 Q. (By Mr. O'Connor) And is that your
4 opinion regardless whether medical records show that
5 Debra Tinlin's heart has normal function at the
6 present time?

7 A. Correct.

8 Q. And are those opinions you hold to a
9 reasonable degree of medical probability?

10 A. Yes.

11 Q. And you were asked questions about earlier
12 CT scans and issues about what they depicted in terms
13 of fragments. Do you recall that? For example, 2008
14 and I think 2012?

15 A. Yes.

16 Q. Are you providing or claiming any
17 radiologist or anybody that did not appreciate or
18 recognize the failed -- the fractured struts were
19 below the standard of care?

20 MS. HELM: I'm going to object to the
21 form. It exceeds the scope of his report.

22 THE WITNESS: I'm not critical of anybody.

23 Q. (By Mr. O'Connor) As a matter of fact, at
24 that time back in 2008, 2012, was the medical
25 community informed in terms of the failures as well

In Re: Bard IVC Filters Products Liability

Page 258

1 MS. HELM: Object to the form.

2 THE WITNESS: I think there's going to be
3 permanent scarring of her heart and inflammation
4 around her heart. And her tricuspid valve may need
5 to be replaced in the future.

6 Q. (By Mr. O'Connor) And why is that?

7 A. Because anytime you do a tricuspid valve
8 repair with coronal reconstructions, there's a higher
9 risk of requiring a replacement down the line.

10 Q. And the fact that Debra Tinlin went
11 through the medical course that she did for the
12 filter failure, the Recovery Filter failure, does
13 that place her -- her condition and the injuries she
14 sustained place her at risk for the development of
15 future conditions such as arrhythmias?

16 A. Yes.

17 Q. Same with cardiac failure?

18 A. Yes.

19 Q. Does it place her more at risk than a
20 patient who had not undergone the type of medical
21 procedures that Debra Tinlin went through?

22 A. Any person who has not had their left
23 ventricle opened up would be at a lower risk than her
24 of developing cardiac failure.

25 Q. So is she at a greater risk than a person

In Re: Bard IVC Filters Products Liability

Page 259

1 who did not experience filter failure or procedures
2 to address the failure of a Recovery Filter?

3 A. Yes.

4 Q. Is that an opinion you hold to a
5 reasonable degree of medical probability?

6 A. Yes.

FURTHER EXAMINATION

7
8 BY MS. HELM:

9 Q. And Dr. Muehrcke, would you agree with me
10 that on January 11, 2019, we're approximately five
11 and a half years post Ms. Tinlin's surgery. Correct?

12 A. Yes.

13 Q. And you have not been provided with any
14 medical records, any documentation, or any testimony
15 that she's suffering from any arrhythmias, correct?

16 A. Correct.

17 Q. Any cardiac failure, correct?

18 A. Correct.

19 Q. Or any cardiac problems at all, correct?

20 A. Pain from her median sternotomy incision
21 and her dislocated right sternoclavicular. And we'll
22 watch her hernia, see what happens with that.

23 Q. Okay. But you haven't been provided with
24 any information that indicates that she is
25 experiencing any of those complications, correct?

In Re: Bard IVC Filters Products Liability

Page 260

1 A. No, other than her tracheomalacia causing
2 her problems, shortness of breath; but that's not
3 from her heart, it's from the surgery.

4 Q. So again, going back to her heart, in the
5 last five and a half years since the surgery, you
6 have not been provided with any medical records that
7 indicate that she is suffering from any of those
8 possible complication you just identified, correct?

9 A. Correct.

10 MS. HELM: That's all I have. Thank you.

11 MR. O'CONNOR: I'm going to ask that
12 Dr. Muehrcke read his deposition and sign it. And if
13 I have a stipulation, I think this is the way we've
14 been doing it, if I can forward him a copy with your
15 correction sheet. If that's okay with counsel,
16 that's the way I'll handle it.

17 MS. HELM: Fine. I don't know what the
18 prior stipulation is, but I'll agree he can read and
19 sign in front of any notary.

20 MR. O'CONNOR: I don't know if there was
21 one.

22 MS. HELM: Okay, that's fine.

23 THE VIDEOGRAPHER: This concludes the
24 deposition. Going off the record at 4:00 p.m.

25 (The deposition concluded at 4:00 p.m.)